



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 7, 2021

Via electronic mail



Via electronic mail

The Honorable Nicholas Pender
Village President
Village of Broadwell
105 East Pine
Broadwell, Illinois 62634
villageofbroadwell@gmail.com

RE: OMA Request for Review – 2021 PAC 67369

Dear [REDACTED] and Mr. Pender:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons that follow, the Public Access Bureau is unable to conclude, based on the available information, that the Board of Trustees (Board) of the Village of Broadwell (Village) improperly restricted public comment during its March 8, 2021, meeting.

BACKGROUND

On March 10, 2021, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA at its March 8, 2021, meeting by improperly restricting his ability to address members of the Board. [REDACTED] explained that during the meeting's public comment period, some other members of the public spoke to the Board about the number of unlicensed and inoperable vehicles parked in the village. He stated that some Board discussion ensued and then he spoke about the same issue, as well as his

concerns about an area of the village with poor drainage. ██████████ asserted that he conveyed his "concern that both issues have been brought to the board's attention in no less than 2 years ago" without action and that he "felt they were derelict in their elected duties[.]"¹ He alleged, in relevant part:

[Village] President Pender while addressing me stated "If you are unhappy with what happens in this village maybe you should move" at that remark I was upset, I emphatically told him that as a taxpayer and resident of this village I had a right to attend this open meeting and state my concerns, w[he]ther him and the rest of the board liked my opinions or not. M[r.] Pender replied, "Maybe you do, but this is my meeting, and you need to leave this meeting now[.]" * * * At first, I stated that I was not going to leave, but then did so, because I did not want to be in possible violation of the law.^[2]

On March 17, 2021, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with a written response to ██████████ OMA allegation and copies of its March 8, 2021, meeting agenda and minutes. On March 25, 2021, this office received the requested materials. On April 7, 2021, this office forwarded a copy of the Board's response to ██████████; thereafter, ██████████ replied.

On August 17, 2021, ██████████ submitted additional information to this office questioning whether Mr. Pender could continue to serve as Village President based on residency requirements. He also noted that no Board meeting notices have been posted since an April 12, 2021, meeting and one special meeting. The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2020)). See 15 ILCS 205/7(c)(3) (West 2020). OMA concerns the transparency with which public bodies meet and conduct business by requiring advance notice and the opportunity for the public to attend meetings, as well as the opportunity for the public to address public officials; it does not address alleged violations of the Illinois Municipal Code or other laws. Accordingly, this office will not review claims related to residency requirements for serving as a public official. Further, this office will not review any allegations that were not raised in ██████████ March 10, 2021, Request for Review.

¹Attachment to OMA – Request for Review by Public Access Counselor (PAC) form from ██████████
██████████ (March 10, 2021).

²Attachment to OMA – Request for Review by Public Access Counselor (PAC) form from ██████████
██████████ (March 10, 2021).

DETERMINATION

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Under the plain language of section 2.06(g), a public body may restrict public comment only pursuant to its established and recorded rules, which must tend to accommodate, rather than unreasonably restrict, the right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. Although OMA does not specifically address the types of public comment rules that a public body may adopt, courts have clarified that public bodies may promulgate reasonable "time, place, and manner" restrictions that are narrowly tailored to serve significant governmental interests. See *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009). For example, a public body may adopt reasonable limitations on public comment to maintain decorum and ensure that meetings are conducted efficiently. *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008). However, rules that govern the decorum of a meeting are permitted only if it is directed to conduct which is "actually disturbing or impeding a meeting." *Acosta v. City of Costa Mesa*, 718 F.3d 800, 811 (9th Cir. 2013) (ordinance unconstitutional because it provided for the removal of individuals for proscribed types of remarks even if those remarks did not disrupt a meeting). Disagreeing with the content of a speaker's speech is not evidence that the speaker created a disturbance or otherwise interfered with the efficiency of the proceedings. See, for example, Ill. Att'y Gen. PAC Req. Rev. Ltr. 39239, issued June 29, 2016, at 4-5.

In its response to this office, the Board confirmed that [REDACTED] addressed the Board during the meeting's period for public comment, but asserted that his comments "although appropriate at the beginning of the discussion, eventually morphed into a belligerent tirade against the Village officials."³ The Board contended that [REDACTED] behavior interfered with its ability to proceed with the meeting and "amounted to disorderly conduct."⁴ The Board argued that the Village President has a duty to "conduct meetings that conform to conventional standards of decorum."⁵ In particular, the Board asserted: "The Village President did ask [REDACTED] to leave after [REDACTED] continued to interrupt the public meeting. The nonsense from [REDACTED] lasted longer than 20 minutes. During that time [REDACTED] was belligerent and

³Letter from Michael T. Fleshman, Woods & Bates, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (March 25, 2021), at 2.

⁴Letter from Michael T. Fleshman, Woods & Bates, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (March 25, 2021), at 2.

⁵Letter from Michael T. Fleshman, Woods & Bates, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (March 25, 2021), at 2.

regularly interrupted the public officials."⁶ Additionally, the Board contended that the Village President "did not forcibly remove ██████████ from the meeting; rather, ██████████ voluntarily left the meeting after being asked to do so."⁷ The Board stated that it was uncertain whether it had adopted rules for public comment, but that it intended to adopt public comment rules at its April 12, 2021, regular meeting and provided this office with a copy of its proposed rules.

In reply to that answer, ██████████ disputed the Board's account of his participation at the meeting and contended that the meeting's minutes were neither complete nor accurate. He asserted that his remarks lasted less than 20 minutes, noting that the meeting started at 7:00 p.m. and that he arrived home at 7:25 p.m. He stated that he had a back-and-forth exchange with the Village President and one of the Board trustees, who "did speak of having a meeting about the flooding and went on to tell me how busy he was with the streets and alley's[.]"⁸ ██████████ acknowledged that he "did interrupt [that trustee] at one point and asked if he was the only one on the board that could do anything."⁹ However, he asserted, in relevant part:

I did express frustration with being 2 years of dealing with the issue, however I cut no one off, (other than I explained above) and though I may have raised my voice in frustration, I did not yell or get louder. I did not tell the board "they needed to turn themselves over to the county" I did tell them that if they were not going to do anything that they should turn the village over to the county to run.^[10]

This office also has reviewed the meeting minutes, which state, in relevant part:

⁶Letter from Michael T. Fleshman, Woods & Bates, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (March 25, 2021), at 2.

⁷Letter from Michael T. Fleshman, Woods & Bates, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (March 25, 2021), at 2.

⁸Letter from ██████████ to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (undated).

⁹Letter from ██████████ to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (undated).

¹⁰Letter from ██████████ to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (undated).

██████████ began raising his voice and yelling that it had been 2 years and still nothing had been done. When the board members tried to speak, ██████████ cut them off and began to talk even louder. He was becoming belligerent and using improper language and told the board they needed to turn themselves over to the county, as the board was doing nothing.^[11]

This office is unable to conclude from these conflicting accounts that the Board improperly restricted ██████████ ability to address its members. Although the Board did not have public comment rules at the time of the meeting, the head of a public body may take measures to preserve decorum and ensure that a meeting is conducted in an orderly and efficient manner. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 53888, issued April 30, 2020, at 4 ("Even without public comment rules, the head of a public body has the authority and responsibility to run a civil and businesslike meeting, including the inherent authority to put a stop to conduct that interferes with the orderly conduct of a meeting."). On the other hand, disagreement over the content of a speaker's comments, such as comments expressing disapproval of a board's management of public business, is not evidence that the speaker is disturbing a meeting, as discussed above. The Public Access Bureau has previously determined that "[w]hen criticism involves the conduct of present or former public officials in the performance of their public duties, significant latitude must be allowed." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, issued April 5, 2016, at 3 (restricting comments criticizing a public official by name impermissible).

Here, the parties dispute the specific nature of the back-and-forth exchange that occurred during public comment. The Board contended that ██████████ comments lasted longer than 20 minutes and became disruptive to the meeting, while ██████████ denied that he was permitted to speak for that long and contended that he was simply critiquing the Board's handling of Village matters. Because of this conflicting information and in the absence of an audio or video recording that documents the precise content of ██████████ comments and the manner in which they were delivered, this office has insufficient evidence from which it could conclude that the Board violated section 2.06(g) of OMA during its March 8, 2021, meeting.

Nonetheless, the Office of the Public Access Counselor is charged with providing advice and education to both public officials and the public. *See* 15 ILCS 205/7(a), (b), (c) (West 2020). To that end, the Board indicated that it planned to adopt rules of order for public comment at its scheduled April 12, 2021, meeting. If it has not already done so, this office advises the Board to adopt reasonable rules governing public comment. In addition, the Board should be mindful of providing members of the public with wide latitude when they are criticizing public officials in the performance of their public duties, notwithstanding that the

¹¹Village of Broadwell, Regular Meeting, March 8, 2021, Minutes 1.


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officials are not required to respond to those criticisms or comments.¹² At the same time, we note that a public body is justified in terminating speakers whose comments are profane or delivered in a disorderly manner that disrupts the proceedings.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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¹²See Ill. Att'y Gen. PAC Req. Rev. Ltr. 37391, issued January 11, 2016, at 7 ("OMA does not require any response by or answers from public officials.")